IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Hawkins	Art Unit: 2425
Serial No.: 10/802,589	Examiner: Stronczer
Filed: March 17, 2004	**50T5731.01**
For: **SYSTEM AND METHOD FOR MULTIMEDIA PLAYLIST**	August 6, 2009 750 B STREET, Suite 3120 San Diego, CA 92101

REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This Reply brief responds to the Examiner's Answer dated August 3, 2009.

The response to the appeal brief begins on page 12 of the Answer with something of a misdirection, namely, that Appellant is arguing features not in the claim. Not every word of an argument in an appeal brief need appear verbatim in a claim to retain potency. Appellant's good faith explanations as to why Pontenzone does not suggest Claim 1 should not be ignored with such facility. In arguing that Pontenzone's playlist cannot be edited or that a user cannot randomly select a song from it, Appellant was observing that this was the reason why Pontenzone cannot reach the language of Claim 1, which indeed requires (1) consumers to be able to access their respective playlists, (2) recalling a playlist for a respective consumer based on a consumer ID identifying the consumer, (3) presenting the playlist on a client device associated with the respective consumer (***never done in Pontenzone*** an indeed entirely unnecessary in Pontenzone for the reasons explained in the brief and ignored in the Answer), (4) receiving at least one selection from the playlist, and (5) processing the selection by

transmitting to the client device a multimedia stream corresponding to the selection. With this plethora of claim limitations in mind, it is untrue that this "functionality is explicitly disclosed in Pontenzone".

On page 13 the Answer alleges that streaming content according to an ordered list is "completely cumulative" with receiving at least one selection from the playlist, and processing the selection by transmitting to the client device a multimedia stream corresponding to the selection. This is clear error. There is no "completely cumulative" test for patentability, and reliance on this novel legal theory is reversible error. Furthermore, a "selection" is just that - something which must be selected in accordance with the plain meaning of the term. A "selection" thus is not simply an entry in a list and thus is not "cumulative" to Ponetenzone.

It is clear error to allege, as the Answer does on page 14, that validation of songs on a playlist is "equivalent" to signifying whether all content in the playlist is available for playback. The examiner has failed to produce evidence that a seeming apple (validation) equals a claimed orange (signifying availability). Something can be validated and not be available for playback, and an invalid song can still be available for playback, however erroneously. The false equivalence underlying the rejection is thus clear error.

Independent Claim 8 continues to recite that the multimedia content is not constrained to be homogenous. The present Office Action fails to mention this limitation. Paragraph 26 of Pontenzone, mentioned on page 15 of the Office Action and buried since 2007 during the present prosecution in a series of "incorporations by reference", appears to teach simply that videos can also be processed according to Pontenzone's principles but not that videos and audio explicitly may be combined in a single playlist.

The Answer concludes with continued allegations of inherency with respect to Claims 9, 11, and 12 the legally requisite necessity of which finds zero support in evidence of record, rendering the vigorous hand-waving to the contrary clearly erroneous.

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Respectfully submitted,

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